



March 24, 2022

**Comments on Petition for Rulemaking
Docket No.: FTC-2022-0005-0001**

National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, appreciates the opportunity to submit comments regarding a petition for rulemaking submitted by several free market and consumer advocacy organizations. NTU advocates for transparency and accountability at all levels of government, and we welcome the opportunity to inform the agency of our views.

The FTC has the ability to affect Americans' lives in the way few other federal agencies do, and we believe impartiality and fairness are critical to the FTC's mission. Unfortunately, these traits have been lacking under the current regime. The agency, under its current Chair, has demonstrated a willingness to avoid public scrutiny¹ and engage on major issues with little time for input from the public.² We find this trend troubling and urge the FTC to promote transparency in the important work the agency does.

Preserving and protecting due process at the agency is important for consumers and businesses. Particularly because the FTC serves as both a prosecutor and judge, maintaining impartiality and avoiding appearances of harmful biases is critical. After all, the agency votes to bring a legal case and later rules on whether the FTC's staff has proven the allegations.³ The fairness of the process is reliant on the ability of Commissioners to deliberate based on the facts of a particular case and to carry out their duties based on their statutory directive, not based on any personal or political motive.

¹ Nylén, Lean and Swan, Betsy Woodruff. "FTC staffers told to back out of public appearances." POLITICO. Accessed March 23, 2022.

<https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386>.

² Withrow, Josh. "NTUF Comments on FTC Sept. 15 Open Meeting, Proposed Recension of 2020 Vertical Merger Guidelines." National Taxpayers Union Foundation. Accessed March 23, 2022.

<https://www.ntu.org/foundation/detail/ntuf-comments-on-ftc-sept-15-open-meeting-proposed-recension-of-2020-vertical-merger-guidelines>

³ Sepp, Pete. "Competition and Consumer Protection in the 21st Century." National Taxpayers Union. Accessed March 22, 2022.

<https://www.ntu.org/publications/detail/commentary-to-the-ftc-on-competition-and-consumer-protection-in-the-21st-century>

Due to concerns about a lack of impartiality, companies like Amazon and Facebook have submitted requests that Chair Lina Khan recuse herself from antitrust matters concerning their businesses.⁴ While it is undoubtedly the prerogative of a defendant to make such a request, some have claimed that this recusal request is tantamount to bullying the regulator.⁵ However, due process concerns should be taken seriously, and while NTU does not take a position on the merits of these recusal requests, we do believe scrutiny and oversight across all federal agencies and bureaucracies are critical components of accountability.

In the interest of promoting accountability and transparency at the FTC, we believe that revising the rules regarding disqualification of Commissioners and standards for determining recusal would be beneficial. Due process is vital for the legitimacy and fairness of any federal agency. Clearer rules and guidelines that protect due process and promote fairness without unnecessarily hampering the ability of the FTC to conduct its normal duties would serve taxpayers, consumers, and businesses alike. On behalf of NTU, we appreciate the FTC's consideration of this issue.

Respectfully,

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⁴ Kendall, Brent. "Facebook Seeks FTC Chair Lina Khan's Recusal in Antitrust Case." *The Wall Street Journal*. Accessed March 23, 2022.

<https://www.wsj.com/articles/facebook-seeks-recusal-of-ftc-chairwoman-in-antitrust-case-11626267605>

⁵ Castro, Daniel. "The Techlash Has Made It So Big Tech Can Do No Right." Information Technology & Innovation Foundation. Accessed March 23, 2022.

<https://itif.org/publications/2021/08/08/techlash-has-made-it-so-big-tech-can-do-no-right>